

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

LASHUNDRA JACKSON,)	
)	
Plaintiff,)	
v.)	
)	CASE NO. 2:07-cv-645-MEF
STATE OF ALABAMA DEPARTMENT OF TRANSPORTATION, JOE MCINNES, etc.,)	
)	
Defendants.)	

DEFENDANTS' RESPONSE TO PLAINTIFF'S SUR-REPLY

COME NOW Defendants, the State of Alabama Department of Transportation and Joe McInnes, by and through their undersigned counsel, and file this response to Plaintiff's Sur-Reply in Opposition to Defendants' Motion for Summary Judgment (Doc No. 29), and state as follows:

Plaintiff contends that, in their Reply Brief (Doc. No. 24), Defendants made several new arguments and attached new evidence not included in their Motion for Summary Judgment. With respect to Defendant's Exhibit 26 (Doc.25-2), Plaintiff contends that these documents were never produced pursuant to discovery requests. This is incorrect. Plaintiff had requested "all documents showing the passage of an algebra course or test or satisfaction of the algebra requirement (including by passage of the placement exam) for probationary Engineering Assistants in the Ninth Division from January 2002 until the present." Defendant's Exhibit 26 is a document entitled "ALDOT Ninth Division All Math Classes January 1, 2002 – February 27, 2008," and is one of three (3) arrays from a Microsoft *Excel* spreadsheet that was e-mailed to Plaintiff's counsel as an attachment on March 6, 2008. (See Defendants' Third Supplemental Evidentiary Material's, filed contemporaneously herewith: Exhibit 33, consisting of e-mail correspondence between counsel which reflect Plaintiff's counsel's receipt, on March 6, 2008, of

the e-mail containing the math placement test results. Also included in this exhibit is a copy of view of the display screen of the attachment when opened. The display includes, as tabs at the bottom of the page, "Placement test," "BM Alg. Class," and "All Math Classes." (All Math Classes is Defendants' Exhibit 26). Plaintiff was sent the same documents, in the same format, as was sent to undersigned counsel by ALDOT employees. Thus, in March 2008, Plaintiff had been furnished the document she now protests.

In their Motion for Summary Judgment (Doc No. 16), Defendants submitted, as Defendants' Exhibit 22 (Doc. No. 18-31), a page from the "Basic Math" and "Algebra" test results in order to show that EA John Majercik was not a proper comparator with respect to Plaintiff's claim that white probationary employees were allowed to end their probations without having passed both basic math and algebra. John Majercik was the only person Plaintiff had identified as such a comparator in her deposition. Plaintiff, in her Response in Opposition to Motion for Summary Judgment (Doc. No. 23), revealed the name of another comparator, Lisa Champagne, arguing that Champagne had not passed math and algebra before achieving permanent status. In reply, Defendants submitted Exhibit 26, which reflected that Champagne had, in fact, passed both basic math and algebra, and Exhibit 30, which further refuted Plaintiff's allegations regarding Champagne.

Plaintiff has now revealed another comparator with respect to the requirement of passing the basic math and algebra courses prior to achieving permanent status. This employee, Gene Blan, was hired by ALDOT on May 1, 2007, and would not have completed his six-month probationary period until October 31, 2007. (See Plaintiff's Exhibit 15 (Doc. No. 29-3)). Blan passed the algebra course on October 22, 2007. As noted on Plaintiff's Exhibit 15, the *effective*

date of Blan's permanent status was November 1, 2007, which is actually *after* he had passed the algebra course. Blan is not a proper comparator.

The additional documents submitted by Defendants were in response to matters asserted by Plaintiff in her Opposition to Motion for Summary Judgment, matters and information that had not been revealed during her deposition. Defendants' argument and evidence is entitled to be considered by the Court.

RESPECTFULLY SUBMITTED

s/ Andrew W. Redd
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CERTIFICATE OF SERVICE

I hereby certify that, on **July 10, 2008**, I electronically filed the foregoing with the Clerk of the Court using the CM/ECT system, which will send notification to the following:

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s/ Andrew W. Redd
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